

DEC 20 2007

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14 UNITED STATES DISTRICT COURT
15 SOUTHERN DISTRICT OF CALIFORNIA

07 CR 3435-JM

16 UNITED STATES OF AMERICA, } Magistrate Case No. 07MJ2821

17 Plaintiff, }
18 v. }
19 CARLOS LOPEZ-MARTINEZ, }
20 Defendant. }
21

**STIPULATION OF FACT AND JOINT
MOTION FOR RELEASE OF
MATERIAL WITNESS(ES) AND
ORDER THEREON**

(Pre-Indictment Fast-Track Program)

22 IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES
23 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and David D.
24 Leshner, Assistant United States Attorney, and defendant CARLOS LOPEZ-MARTINEZ, by and
25 through and with the advice and consent of defense counsel, Gary P. Burcham, that:

26 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
27 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
28 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.
§ 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

29 //

30 DDL:rp:12/10/07

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before **January 7, 2008**.

6 4. The material witnesses, Maria Hernandez-Juarez and Gloria Acosta-Ruiz, in this case:

7 a. Are aliens with no lawful right to enter or remain in the United States;
8 b. Entered or attempted to enter the United States illegally on or about
9 December 4, 2007;

10 c. Were found in a vehicle driven by defendant at the Tecate, California Port of
11 Entry (POE) and that defendant knew or acted in reckless disregard of the fact that they were aliens
12 with no lawful right to enter or remain in the United States;

13 d. Were paying and or having others pay on their behalf \$3,000 to others to be
14 brought into the United States illegally and/or transported illegally to their destination therein; and,
15 e. May be released and remanded immediately to the Department of Homeland
16 Security for return to their country of origin.

17 5. After the material witnesses are ordered released by the Court pursuant to this
18 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
19 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
20 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

21 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
22 substantive evidence;

23 b. The United States may elicit hearsay testimony from arresting agents
24 regarding any statements made by the material witness(es) provided in discovery, and such testimony
25 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest
26 of (an) unavailable witness(es); and,

27 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),

1 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
2 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
3 waives the right to confront and cross-examine the material witness(es) in this case.

4 6. By signing this stipulation and joint motion, defendant certifies that defendant has
5 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
6 further that defendant has discussed the terms of this stipulation and joint motion with defense
7 counsel and fully understands its meaning and effect.

8 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
9 immediate release and remand of the above-named material witness(es) to the Department of
10 Homeland Security for return to their country of origin.

11 It is STIPULATED AND AGREED this date.

12 Respectfully submitted,

13 KAREN P. HEWITT
14 United States Attorney

15 Dated: 12/20/07.


DAVID D. LESHNER

16 Assistant United States Attorney

17 Dated: 12/18/07.


GARY P. BURCHAM
18 Defense Counsel for Carlos Lopez-Martinez

19 Dated: 12-18-07.


CARLOS LOPEZ MARTINEZ
20 CARLOS LOPEZ-MARTINEZ
21 Defendant

ORDER

2 Upon joint application and motion of the parties, and for good cause shown,
3 **THE STIPULATION** is admitted into evidence, and,
4 **IT IS ORDERED** that the above-named material witness(es) be released and remanded
5 forthwith to the Department of Homeland Security for return to their country of origin.
6 **SO ORDERED.**

Dated: 12/20/2007

Reveron B. B.
United States Magistrate Judge